

Testimony re HB21-1093 – March 18, 2021

I'd like to start by thanking the chair and committee members for your consideration of this testimony. My name is Alissa Gardenswartz and I submit this testimony on behalf of the Legal Affairs Council, a council of the Denver Metro Chamber of Commerce and Colorado Competitive Council. Both the Chamber and C3 are opposed to House Bill 1093.

Allowing class actions under the CCPA will not result in increased protections or benefits for consumers.

1. First, there is already a mechanism for private enforcement of the CCPA that enables private plaintiffs to address widespread harm – per *Hall* and *Martinez*, private plaintiffs must demonstrate that the alleged violation has significant public impact
 - a. Allows for private parties to enforce the CCPA, provides for recovery of at least \$500 [treble if bad faith conduct] and attorney fees and costs if successful
 - b. If the harm is widespread, better path to additional consumer recovery is for the attorney general to do a follow-on to a successful private action – maximizes recovery for consumers and minimizes attorney fees
 - i. In contrast, allowing class actions under the CCPA will likely lead to the reverse, where class counsel are incentivized to file cases based upon AG investigations or enforcement, more to obtain fees than to help consumers
2. Second, the primary mechanism for CCPA enforcement is through the AG and DAs, and has proven to be effective for Colorado consumers. Through bringing individual actions as well as leveraging relationships with other state AGs in multistate actions, the AG is able to obtain both monetary relief for consumers as well as injunctive relief to curb unfair and deceptive acts and practices; can also obtain penalties, which operates to further deter businesses from engaging in deceptive practices.
 - Penalty cap lifted a couple of years ago, even more of a deterrent now
 - The AG's office has been, and continues to be very aggressive in enforcing the CCPA to the benefit of Colorado consumers
 - A 2017 article in the Harvard Journal on Legislation examining the enforcement of state consumer protection laws from 2014 to 2017 classified each state AG according to their enforcement strategy, and classified the Colorado AG's office as a "heavy" – an office with high case volumes and with larger recoveries per case against larger defendants. Other states classified as "heavies" were much larger – Texas, New York and Florida were also in this category.
 - In sum, the statute contemplates enforcement primarily by the AG, and the AG has effectively used to address widespread harm to consumers.
2. Accordingly, allowing class actions under the CCPA will confer little, if any additional benefit to consumers, but most certainly burden businesses.
 - My understanding is that the sponsors did not engage stakeholders to fully understand the impact of this law to businesses

- Threat of class action is often used to extract nuisance value settlement because of the tremendous burden it creates
- With addition of broader unfairness jurisdiction in 2019, more potential for frivolous lawsuits